

A
S T A T E

OF THE

SEVERAL CAUSES

BETWEEN THE

Rev. Sir GEORGE BOOTH, Bart.

Reitor of ASHTON-UNDER-LINE, in the County of
LANCASTER,

COMPLAINANT,

And WILLIAM LEES, JOHN SAXON, WILLIAM WRIGHT,
GEORGE KELSAL, and Others,

DEFENDANTS.

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Rev. Sir GEORGE BOOTH, Bart.

Rector of ASHTON-UNDER-LINE, in the County of
LANCASTER,

COMPLAINANT,

And WILLIAM LEES, JOHN SAXON, WILLIAM
WRIGHT, GEORGE KELSAL, and Others,

DEFENDANTS;

Relative to COMPLAINANTS Demand of the Tythe of Hay
within the said PARISH,

With the PROCEEDINGS in the CONSISTORY-COURT of
the Diocese of CHESTER,

And the PLEADINGS in the Court of EXCHEQUER.



L O N D O N :

Printed in the Year 1770.

A
S T A T E

OF THE

SEVERAL CAUSES

BETWEEN THE

Rev. Sir George Booth, Bart.

Respondent under Licence in the County of
Lancashire.

COMPLAINANT,

And William Jones, John Jackson, William
Wright, George Kendall, and Others

DEFENDANTS;

Relative to Certain Plaintiffs Demand of the Title of Hay
in the County of Lancashire.

With the Proceedings in the County Court of
the District of Lancaster.

And the Proceedings in the Court of Exchequer.



LONDON:

Printed by J. Johnson.

A S T A T E, &c.

AS the Matter in litigation has been artfully and industriously represented, by the Defendants and their Adherents, as an Act of Oppression on the Part of the Plaintiff, for Reasons too obvious to need any Explication. Therefore, in order to vindicate a Character thus unjustly attacked, and to remove those Prejudices impressed by such Misrepresentation and Falsehood, It was thought proper to lay before the Public the true State of the Case, and to set it in so clear a Point of View, that it may be perceptible to every one who chuses to look at it. The Dispute subsisting is this, whether certain Meadow Lands in the Parish of *Ashton-under-line* ought not to pay the Rector Tythe-Hay in kind, as due of common right, *Non-payment being no Defence against that Right*; or whether the said Lands are co-

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vered by a Modus of 1d. in lieu of Tythe of Hay of each Farm. The Plaintiff says, at *Easter*, every Man and his Wife, whether they have Hay or no Hay, pay to the Rector 6d. as an Easter Offering, and every single Person above Twenty-one, whether Housekeeper or Sojourner, 4d. for an Easter Offering.

On the first Demand of the Tythe of Hay of the said Lands, the Occupiers said, they never had paid any Tythe-Hay or any thing in lieu of Tythe of Hay, nor would they. But on the Plaintiff's preferring a Libel in the Consistory Court of Chester, against *William Lees* for Tythe of Hay, in 1761, finding the Plea of *Non-Payment* would not avail him, he split the Easter-offering, viz. 6d. a Man and his Wife, and 4d. a single Person as aforesaid, and swore 2d. was paid for a Man, 2d. for his Wife, 1d. for House and Garden, and 1d. for Tythe of Hay; and knowing that there were several Persons who paid Tithe of Hay in kind, who besides paid 6d. a Man and his Wife, and 4d. a single Person for an Easter-Offering, and likewise that great Numbers who lived in *Ash-ton* Town, and who had no Meadow or other Lands, paid the said 6d. and 4d. for an Easter Offering: He swore further, that a Cottager or Inhabitant, being a Householder in the Parish
of

of *Ashton-under-line*, whether they had, growed, or cut down, Hay, or no Hay, paid or tendered a Modus or Composition in lieu of Tythe Hay, *which is absolutely Nonsense.*

In the Cause tried in the *Exchequer*, July 4, 1768. *Booth* against *Saxon*, his Witnesses *Ashton*, &c. swore that there had been an immemorial Custom, that all Householders throughout the Parish, whether they had Hay or no Hay, pay'd id. a Year in lieu of Tythe Hay, and divided the Easter Offering as *Lees* had done, but he failed in his pretended Modus, and the Court decreed, he should account to the Plaintiff, which he has since done.

Other People in the Parish declaring they would pay no Hay-Tythe, nor be concluded or determined by *Saxon's* Trial, the Plaintiff was necessitated to file another Bill in the *Exchequer* against *William Wright* and *George Kelsal*, for the Tythe of Hay in 1768, who having experienced by *Saxon's* Cause, that the absurd Position of People in general, whether they had Hay or no Hay, paying id. in lieu of Tythe Hay would not do, they availed themselves by another Method ; they shifted their Ground, and got *Ashton*, who had in *Saxon's* Case sworn there was an immemorial Custom for every Housekeeper, as before mentioned, to pay id.

Tithe Hay, whether they had any or not, to swear that there were particular Privileges belonging to *Wright's* and *Kelsal's* Farms, and that each paid 1 d. in lieu of Tythe Hay, *tho' one consisted of 60, and the other of about 16 Acres, Lancashire-measure*, which is equal to almost double Statute Measure. And they will swear one by one, that every Farm in the Parish has a particular Modus of 1 d. in lieu of Tythe of Hay; and endeavour to accomplish by that Means, what they could not do by setting up a general Modus of 1 d. for Tythe of Hay ~~in general~~, before any Observations on the Hearing of *Booth* and *Wright*.

It may not be improper to state some Facts, which will exculpate the Plaintiff, and plainly demonstrate on which side the Oppression lies. The last Rector but one, it is said, died mad; the last, but in indifferent circumstances, notwithstanding he had been thirty years Rector; for tho' the Parish is of vast extent, it is infinitely inferior to the other neighbouring Parishes in point of Emolument; for, whenever the Rectors demanded, and endeavoured to recover their Rights, they were menaced by the People's meeting in a tumultuous manner, and threatening to join Purfes, to withstand any Suit brought against any of them for Tythes.

And

And when the present Rector sent his Servant, *T. London*, with written Notices to *Wright*, *Kelsal*, &c. some of them drove him from off the Land with their Hay-forks; and in a Day or two after, assembled to the number of many hundreds, at a Public House, and paraded to Church in a tumultuous manner, declaring they would pay no Tythe of Hay, to the great Terror of the Rector's Family, then at the Parsonage House. Afterwards an Article was drawn by the late Mr. *Jos. Broome*, Attorney at Law, of *Manchester*, dated *October 1, 1759*, and subscribed by them, (many of whom are Men of good Fortunes) agreeing to pay into the Hands of *George Kelsal*, the Defendant in this Cause, *James Grimshaw* and *John Saxon*, their ratable Share of Money, to be ascertained by the Poor's Rate, towards carrying on, defending, and supporting any Suit, brought against any of the Parishioners. And the said *Geo. Kelsal*, at a tumultuous Meeting, many hundreds attending it, for that Purpose appointed by him, or some of them; did, on the 14th of *Sept. 1768*, nominate and appoint *R. Nott*, *Neddy Hall*, *William Knight*, *James Buckley*, and four others, to be Collectors, to collect Money for the aforesaid use accordingly: *Altho' there might be some Pretence,*

(tho' a very bad one) to make a general Purse, to defend a pretended general Modus, as all were interested, and under the same Predicament ; yet, as Kelsal and Wright's Witnesses swear their Farms have particular Privileges of 1d. in lieu of Tythe, it is Maintenance, (and indictable) in any Person, to contribute any thing towards their Expences, as no others than themselves can be interested in their particular Farms.

At the Hearing between *Booth* and *Wright*, June 18, 1770, when Mr. Baron *Perrot* asked if there was a Contrariety of Evidence, he should have been answered, not such an one as would affect the Plaintiff, or induce the Court to grant an issue; and if it had been insisted, that the Depositions of the Defendants Witnesses should have been read, their own Absurdities, nay, their own impossibilities, must have destroyed them, had they been properly investigated.

Ashton, an ignorant Man, one of the Poor of the Parish of *Ashton*, swore, in *Booth* and *Saxon's* Case, tried in the Exchequer, July 4, 1768, that there was an immemorial Custom, throughout the whole Parish, for every Householder to pay 2d. for himself, 2d. for his Wife, for a House and Garden 1d. and 1d. for Tythe Hay; that he lived in a Cot five
Years

Years, which had neither Garden nor other Land belonging to it, and yet paid Six-pence in lieu of Tythes and Easter Offerings. *He is a good Evidence for the Plaintiff ; no Part of the Easter Offering could be paid for Tythe, as he had none.* In *Booth and Wright*, he swore, that his (*Wright's*) and *Kelsal's* Farms had particular Privileges ; that he saw *Lanrence Wright* pay 1 d. for Tythe Hay ; and that he had carried Money to the Rector for several ancient Tenements ; he said, when a Master or Mistress died, the Rector abated 2 d. out of the 6 d. N. B. *It must be so, as a Man and Wife paid 6 d. a single Person 4 d.*

Marland swore he was seventy Years old, and that his Uncle told him of this Modus forty Years before he died, and that his said Uncle had been dead 30 Years. He particularized *Wright's* and *Kelsal's* Farms ; said 2 d. was paid for a Man, 2 d. for his Wife, 1 d. for House and Garden, and 1 d. for Tythe Hay, as Easter Dues or Offerings, constantly at Easter ; and said his Father paid as much for Easter Dues, tho' he had no Land, as those who had Land ; that his Uncle paid the said Sum, his said Uncle occupying two Closes in the Parish ; said he himself paid the said Sum of 6 d. tho' he never occupied any Land in the Parish.

N. B. *The*

N. B. *The first, about his Uncle, is impossible, as the Time his Uncle told him of the pretended Modus, must be the Year he was born.* If any Credit can be given to this Witness, it must be in Favour of the Plaintiff, greatly as he swore, that those who had no Hay, paid as much as those that had Hay; *People cannot pay for what they have not,* and the Payment of the Easter Dues, or Offering, being ^{made} ~~paid~~ always at Easter, demonstrates the 6d. to be for an Easter Offering only; if there was any Modus for Tythe-Hay, why should the Payment be reserved till Easter, half a Year after the Hay was made?

* *Isaac Nicholson*, on his Cross-examination said, in 1758 he entered upon and occupied Part of a Tenement called *Cockers*, consisting of an Acre and a half of Meadow, half an Acre of Arable, and three Acres of Pasture; that he held the same till Lady-day 1768, during which Time he mowed the said Meadow Land, and made the Grass into Hay; said nine Years ago he purchased a Tenement called *Saxon's*, for 340l. and about Christmas last, he executed an Assignment thereof to *Jessie Whitworth*, and *Hannah* his Wife, the

• A Suit in *Chancery* is pending between *Booth* and *Nicholson*, which he will get rid of, if by swearing for Defendants, they can establish this pretended Modus.

Deponent's

Deponent's only Child, for 480l. for which *Whitworth* gave him a Note of Hand; (does not say what Meadow he had here on this Farm;) said during the Time he held *Coker's* Tenement, he had an Acre and a half of Meadow Ground for ten Years, while the Plaintiff was Rector, but never paid Tythe or Satisfaction in lieu of such Hay, except as after-mentioned; said that about eleven Years from the Time that the Plaintiff became Rector, he paid his Collector for himself 2d. as an Easter Offering; for his House and Garden 1d. and for Tythe Hay the Sum of 1d. which Sums of 1d. and 1d. the Deponent understood and believed were Moduses and customary Payments, in lieu of his House, Garden, and Hay.

N. B. This Man has just the same pretended Modus of 1d. for his Farm, in lieu of Tythe Hay, as *Wright* and *Kelsal*, though his Farm consisted of but five Acres of Land, *Wright's* of 60, and *Kelsal's*, *Marland* said of 25, *Ashton* 16 : *Nicholson* owned he had Tythe of Hay on *Coker's* Tenement from 1758 to 1768, so that he is interested in the Event of this Suit, for if he, by swearing for the Defendants, can establish this pretended Custom, he exonerates himself from the Payment

ment of ten Years Tythe Hay, besides the Hay which grew upon the Farm called *Saxon's*, which he purchased nine Years ago, and which he kept 'till *Christmas* 1769, when he made a colourable Affignment of it to his Son-in-law, for a Note of Hand, and removed into another Parish, in order to become an Evidence for the Defendants.

John Dennill produced the Register-Book from *Chester*, in which the Terrier of *Ashton* Rectory was registered; in which Terrier it was recited, The Corn-Tythe, Privy-Tythe, and *Custom-Money*, yearly arising and growing, due to the Rector of the said Rectory, has been, and we judge to be worth (*no sum mentioned*) and hereunto we have set our Hands, &c. *The Custom-Money*, the Defendants would insinuate, was the Penny they talk of being paid for Tythe-Hay, whereas it is apparently a Modus of 13*l.* 7*s.* 6*d.* paid in lieu of Corn-Tythe, for a small part of the Parish, as will be shewn hereafter, by an Inquisition taken by order of the Parliament in 1650.

These are the Defendants only Witnesses; but the Court did not know what they had deposed, their Depositions not being read. It is presumed a Court of Equity can judge of the Competency, or Incompetency of the Witnesses;

ses ; and possibility, or impossibility of what they swear to be true ; and, as far as is consistent, endeavour to retain the Parson's Cause for this cogent and equitable Reason, observed from the Bench, *That Juries were not the most favourable to the Tythe Causes* without this Care and Protection from a Court of Equity, which, no doubt, if properly informed of, it will grant. If a Parson files a Bill in the *Exchequer* for recovery of Tythe, the Defendants have nothing more to do, than get two Persons fit for their Purpose, to swear there is a Modus paid in lieu of the Tythe demanded, which, however improbable, nay, impossible, if not controverted and thoroughly investigated, to sift out the Truth, an Issue is directed to try the Fact at Law, Modus or no Modus. But to return to the Hearing, in the *Exchequer* June 18, 1770.

Mr. Robinson, Witness for Plaintiff's Deposition being read, he deposed, that he had known the Parish of *Ashton* 13 Years, and saw the Plaintiff in 1760, receive of Mr. *William Whitehead*, and * *Isaac Nicholson* 5s. 6d. an Acre, as a Composition for the Tythe of Hay which grew on the ancient demesne Meadow in said Parish ; that he knew *Wood-Park*, the Farm belonging to *Wm.*

* Not *Isaac Nicholson*, the Defendant's Witness.

Wright ;

Wright ; and likewise the Farm called *Dennis's*, belonging to *George Kelsal* ; that *Wright* mowed ten Acres of Meadow, and made Hay from it, and *Kelsal* five, and made Hay from his ; never remembered any Tythe-Hay taken in kind, or any Composition or Modus paid, or pretended to be paid in lieu thereof (except the ancient demefne Lands.) That on *Easter Monday*, 1760, he began to collect and receive for that Year the Easter Offering and small Tythe for the Plaintiff from the Parishioners, particularly of and from *William Wright* and *George Kelsal*, the Sum of 6*d.* a-piece for, and as an Easter Offering for themselves and Wives, and on no other Acconut whatsoever ; that he received of them several Sums for small Tythe, but how much, he did not recollect. That he received the same agreeable to the particulars specified in the Custom herein after set forth, and believed it an ancient Custom in the Parish for the Payment of Easter Offerings, *viz.* the Sum of 6*d.* for a Man and his Wife, and 4*d.* a single Person, whether Batchelor, Widower, or Widow, above twenty-one years of Age, which had been received by the Rectors, and considered by them to be paid for an Easter Offering, only, and on no other account ; that he was the more induced to believe there was such an ancient Custom in the Parish, by reason the Particulars

particulars were delivered to him by * *Isaac Nicholson*, late Collector thereof for the Rev. Mr. *Penny*, deceased, the late Rector of the said Parish. *Here the Deponent sets forth the Custom of paying for Calves, Pigs, &c. and for a Man and Wife 6d. for an Easter Offering, and 4d. a single Person.* That he believed it to be a general Custom, that Easter Offerings and small Tythe were payable according to the above-mentioned Custom, because he received such Custom from *Isaac Nicholson* Collector for the late Rector, as aforesaid, and that he was induced to believe such Custom, as well in relation to the Easter Offering as small Tythe, because several ancient Inhabitants, much advanced in Years, particularly *William Wright* and *George Kelsal* paid to the Deponent when Collector for the Plaintiff, their Easter Offerings and small Tythe, after the Rates and Particulars mentioned in the said Customs, and admitted and acknowledged the same to be a just and fair demand. That during the whole time he resided in *Ashton* Parish, he did not remember to have heard any Person make the least Objection to any of the Particulars herein before-mentioned, as to the mode of collecting and receiving such Easter Offerings and small Tythe within the said Parish. That during the time

* This *Nicholson* is Defendant's Witness in this Cause.

he resided, and was officiating Minister at *Ashton*, which was four Years and half, all Persons in general within the said Parish, and particularly those who paid a Composition of 5s. 6d. an Acre for the Tythe of the Hay of the ancient demesne Land, did pay the said yearly Sum of 6d. for a Man and Wife, and 4d. a single Person above Twenty-one, as and for an Easter Offering, and not upon any other Account; and further said, that Persons living and residing in the said Parish who had no Meadow, or Land, or House, or Garden, but were Sojourners, or Inmates, paid the said Sum of 6d. for a Man and his Wife, and 4d. for single Persons of the Age of Twenty-one, as and for Easter Offerings, as well as those who had Meadow or Hay Land within the said Parish.

John Chetbam deposed, that for upwards of Thirty-years last past he had been a married Man, and resided in said Parish, and during that Time, there had been a Custom relating to Easter Offerings, *viz.* for a Man and his Wife to pay 6d. which he or his Wife constantly paid at Easter for Easter Offerings; that he had heard, and believed that there was a further Custom for Easter Offerings, *viz.* for every single Man or Woman 4d.—That during the Time he resided in the Parish aforesaid,

said, he never occupied any Meadow Grounds, or other Lands in the Parish. That he had been informed by several Persons residing in the Parish, and believed it might be true, that Persons who held Meadow Ground in the said Parish, paid no more for Easter Dues or Offerings than those who only rented a House and Garden, without any Meadow Ground, or other Land.

Thomas London deposed, that in *June* 1759, the Plaintiff sent this Deponent with Notices in writing to *Wright*, and a great many other Parishioners, concerning their Payment of Tythe Hay. And the Deponent accordingly did deliver such written Notices to said Defendants, &c. That the Purport of those written Notices were, that the Parishioners should set out the Hay belonging to their respective Lands, in the said Parish, for the Plaintiff to take his Tythe thereof, or that they should pay him Money in lieu of Tythe-Hay, or to that effect, —That he received for answer from the Parishioners in general, after they had read the Notices, that they never had given any Tythe Hay, or ever paid any thing in lieu of it; and if the Rector offered to take Tythe Hay from them, or make them pay any Money in lieu thereof, he would have his Brains beat out, or
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to that Effect. That he was sent by the Plaintiff in 1759, to tythe the Hay on the Farm called *Wood-Park*, belonging to *William Wright*. That *Wright* told him he never had paid Tythe of Hay, nor any thing in lieu of it, and he, *London*, being prepared with some Boughs in his Hand to tythe the Hay, the Defendant *Wright*, and his People who were with him, drove him from off the Ground, and obliged him to run away, to avoid the Mischief he was threatened with.

The Rev. *John Craddock* deposed, that he had known *Ashton* twenty-eight Years, that he had a Lease from the Plaintiff of the great and small Tythe, and Easter Offerings becoming due within the said Parish for twenty-one Years, if the Plaintiff should so long live and continue Rector, six Years whereof were expired, out of which Lease were excepted to the Plaintiff the Tythe of Hay of all the Meadow Lands (except the ancient demesne Lands.) That for six Years he had received the Sum of 5*s.* 6*d.* an Acre, for such the demesne Lands, as a Composition for the Tythe-Hay that grew thereon. That he knew the Messuage or Tenement called *Wood-Park*; and that part thereof was occupied by the Defendant *William Wright*; and also the Tenement or Farm called *Dennis's*,
part

part whereof was in the Occupation of *George Kelsal* and his Tenants, and had known the said Tenements, called *Wood-Park* and *Dennis's* 10 Years, believed that the Defendant, *William Wright*, had occupied for 10 Years last past and upwards, 6 Acres of Meadow-Land of the said Tenement, and mowed the same for Hay yearly; believed that the Defendant *Geo. Kelsal*, and *Martha* his Wife, occupied for 10 Years and upwards, between 3 and 5 Acres of Meadow Land, part of the said Tenement, and had mowed the same for Hay yearly; that in 1761, Deponent or his Substitute, *J. Dunkerly* received the several small Tithes and Offerings arising within the said Parish, by the Order and for the Use of the Plaintiff from several of the Parishioners, Residents and Inhabitants in the same Parish; that soon after he became Lessee from Plaintiff of all great and small Tithes (except as before mentioned,) arising within the said Parish, for the Term of 21 Years; that for 6 Years last past, he, as Lessee as aforesaid, or *John Shaw*, his Under-Tenant, had received, as he believed the small Tithes, or Offerings, particularly in 1762, Deponent received from *Martha Kelsal* 6d. for herself and her Husband, *George Kelsal*, for an Easter-Offering only, and on no other Ac-

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count;

count; that there was a Custom within the said Parish, which he believed to be an ancient one for the payment of Easter-Offerings; and also of small Tithes, to the effect set forth by Mr. *Robinson*, viz. 6d. for a Man and Wife, and 4d. a single Person, for an Easter-Offering; and that such Custom had been followed by Deponent since the commencement of the said Lease—That he believed the above Custom had been followed by the Rectors of said Parish, as the Parishioners and Inhabitants from whom he received such Offerings and small Tithes, constantly complied therewith, and acknowledged the same to be Right, save 5 or 6 of the Parishioners and Inhabitants of the said Parish, have objected to the Mode of Collecting Offerings as to 6d. for a Man and his Wife, since the Plaintiff had made a demand upon them for Tithe-Hay, but not before, to this Deponent's knowledge or belief.—That he believed it to be the general Reputation within said Parish, that Easter-Offerings and small Tithes ought to be paid according to the said Custom, by reason he never heard of any Objection being made to the Mode of Collecting such Easter-Offerings and small Tithes as aforesaid, before the present Rec-

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tor demanded Tithe-Hay from the Meadow Lands in the same Parish.—That all such Persons who pay a Composition of 5s. 6d. for their Tithe of Hay of the ancient Demesne Lands within the said Parish, do pay the said yearly Sum of 6d. for a Man and his Wife, and 4d. for a Sojourner, as Easter-Offerings only, and not upon any other Account ; that Persons living in the said Parish, who had no Meadow, or Land, or House, or Garden, but were only Inmates, paid the said sum of 6d. a Man and his Wife, and 4d. for a Sojourner, and 4d. for a Widower, or Widow respectively, for Easter-Offerings, as well as those who had Meadow or Hay Land within the said Parish ; that he had a Freehold-Tenement, by Virtue of a Grant under the Countess of *Stamford* for Lives in the said Parish, consisting of a Messuage and 27 Acres of Land ; and likewise of a Cottage ; and that the Messuage and Lands were in Possession of *John Hawcourt*, and one *John Miller* was in Possession of the Cottage ; and that *Hawcourt* was not liable to pay any more for Easter-Offerings than *Miller*, unless *Hawcourt* should have a larger Number of Communicants in his Family.

That he was informed that one *Isaac Nicholson*, then, or late of the said Parish of *Ashton-*
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under-line, had been produced to the Commissioners present, as a Witness to have been examined in this Cause on the part of the Defendants, who had two or three Years since the Plaintiff became Rector of the said Parish, occupied Meadow Land in the said Parish, which Deponent believed was not part of the Demesne Lands in the said Parish, and that the said *Nicholson* had cut down the Grass and made the same into Hay; therefore the said *Nicholson* might be eventually interested in this Cause for any thing this Deponent knew to the contrary, because *Nicholson* had not paid any Tithe-hay in kind as Deponent believed.

John Shaw said for six Years last past, he had collected the great and small Tithes, and particularly the Easter Dues or Offerings in the said Parish, the Two first Years by the Order of *J. Craddock* Clerk, as Lessee of the Plaintiff, and for the Four last Years for the Use of the Deponent; Deponent having contracted with the said *J. Craddock* for the remainder of his Term and Interest therein, at 26l. *per Ann.* which Easter-Offerings consisted according to the ancient Usage and Custom of the Parish, set forth by Mr. *Robinson*: That he constantly in such Years attended upon *Easter-Monday* and *Tuesday* in the Vestry of the Parish-Church,

to receive such E. Offerings; Notice having been Publickly given in the Church on *Easter-Sunday* for that purpose; and when the Persons residing in the said Parish, who ought to have paid, neglected to come, and pay the same in the Vestry; the Deponent went in every Year, soon after the appointed Times, to the Dwelling-Houses of the Defaulters to receive the same.—That for 2 of the first Years of said 6 Years, he received from the Defendant *G. Kelsal*, which the Deponent then accepted and received 6d. as an Offering for the said *G. Kelsal* and his Wife, tho' not so (expressed by him,) That for the last four Years he had received of *G. Kelsal* for his Cows, and Easter-Offerings 10d. Yearly, at which respective Times *G. Kelsal* declared to Deponent that it had been the usual Custom to pay such Easter-Offerings, as to 6d. part thereof, viz. for himself 2d. his Wife 2d. his House and Garden 1d. and 1d. in lieu of the Tithe-Hay; that he had no directions from the Plaintiff or Mr. *Craddock* to receive the 6d. in the Manner expressed by Defendant *Kelsal*, that about three Years ago, *G. Kelsal* ask'd the Deponent to tell such Persons who paid 6d. as an Offering, if they should ask him what they paid the same for; to say 2d. a Husband, 2d. for a Wife, 1d. for a

House and Garden, and id. for Tithe-Hay, which he accordingly did, the said *Kelsal* saying it was an ancient Custom near forgot. — That there was then a Suit in the Consistory Court of *Chester* between the Plaintiff and several Persons residing in the Parish, touching the right of Tithe-Hay in the said Parish.

That for the first four Years of the said Six, the Defendant *Wright*, as Deponent had been informed and believed, paid his Easter-Dues and Offering to Mr. *Craddock*, but for the two last Years to Deponent, declaring to the same effect as *G. Kelsal* had done—That during the six Years, he has received from Defendants *Booth* and *Kenworthy* their E. Offerings, viz. 6d. for themselves and Wives each, believed they might say as *Wright* and *Kelsal* had done. — That there was a Custom in the Parish for the payment of E. Offerings as set forth by Mr. *Robinson*, which had been followed ever since he had known the Parish (upwards of twenty Years,) and believed from general Reputation that Easter-Offering ought to be paid according to such Custom.— That all Persons in the Parish, who paid the Tithe of Hay in kind, or a Composition in lieu thereof, did pay Yearly for a Man and his Wife 6d. and 4d. for a single Man or Woman, (when any such) for an

an Easter-Offering only, and on no other Account; That all Persons living in the said Parish, who held no Meadow, or Land, or House, or Garden, but were only Sojourners and Inmates, paid the said Sums of 6d. and 4d. for Easter-Offerings, as well as such who held Meadow and Hay-land within the said Parish.-- That in *March* last, he signed a Receipt to one *Miles Greaves* of *Ashton*, Apothecary, for 11½d. or thereabouts, for Easter-Offerings, and that the said *Miles* drew up and wrote the same, and in which Receipt was specified as Deponent believed, 2d. for the said *Miles Greaves*, 2d. for his Wife, 1½d. for his Son, Daughter, and Servant, 3d. for three Cows, 1d. for two Calves, 1d. for his House and Garden, and 1d. for Tithe-Hay; in the whole 11½d. That at the Time he signed the Receipt, he was very careless about the Mode in which the Receipt was drawn, as he received the whole Sum he claimed, and before that Time he had received Easter-Offerings from the said *Miles Greaves* for five Years, but had never given any Receipt; that he was induced to sign such Receipt by the said *Miles Greaves*, by reason he inform'd Deponent, that all the Neighbouring Gentlemen about *Oldham*, (an adjoining Parish,) would have Receipts for their Easter-Offerings;
and

and said Mr. *Harris*, Rector of *Prestwich*; in the County of *Lancaster*, did not refuse, either by himself or Collectors, to sign Receipts for Easter-Offerings; to which Deponent answered, if the Plaintiff, or Mr. *Craddock*, his Lessee, knew of such Receipt, they would be very angry; whereupon *Miles Greaves* said, they, (meaning Plaintiff and Mr. *Craddock*,) would never know; and soon after Deponent signed such Receipt, and then went Home; and Deponent next Day being uneasy at signing such Receipt, he went to Mr. *Craddock* and told him of the whole Transaction, as before set forth, to which the said Mr. *Craddock* said to the Deponent he had done a very wrong Thing; upon which Deponent applied to the said *Miles Greaves* to deliver the same up to him, which he refused to do, but said, *John*, (Meaning the Deponent,) I will give you my Word and Honour, that the said Note shall never be brought in Question, unless the Plaintiff should commence a Suit against me.

N. B. Mr. Greaves sets up the same pretended Modus of 1d. in lieu of Hay, as Wright, Kelsal, and Nicholson do.

An Exhibit was made of a Commission under the Great Seal of *England*, held at *Manchester*, in the County of *Lancaster*, 18th July, 1650,

1650, by Four Commissioners, by whom, with Twelve Jurors of the Neighbourhood of *Ashton*, an Inquisition of the Rectory of *Ashton* was taken and returned to Parliament.

‘ The Inquisition says, there belongs to the
 ‘ said Parish Church of *Ashton*, one Parsonage
 ‘ House, and certain Tenements, with twenty Acres of Land, or thereabout, amounting
 ‘ to the yearly Value of 13l. 6s. 8d. and that
 ‘ the Rents, Profits, and Tithes, are yearly
 ‘ worth 100l. whereof the Sum of 13l. 7s. 9d.
 ‘ is paid and pretended by Prescription, and we
 ‘ present that the aforesaid Mr. *John Harrison*
 ‘ was put in by the Parliament, to the aforesaid
 ‘ Benefice, and that Sir *George Booth*,
 ‘ Knight and Baronet, has formerly presented
 ‘ Ministers to the same, and that the aforesaid
 ‘ Mr. *Harrison*, receives the aforesaid 113l.
 ‘ 6s. 8. *per Ann.* and we present, that the
 ‘ Tithe of Corn, of such Lands which pay the
 ‘ said Prescription-Money, if they were paid
 ‘ in kind, are worth more than they pay, 15l.
 ‘ *per Ann.*” This extract is all that relates to
 the income of the Living, and is signed by
 Twelve Jurors on their Oaths, and the Four
 Commissioners.

When the above Inquisition was read in Court, which described this *Modus* of 13l. 7s. 6d.

6d. paid, in lieu of the Corn-Tithe of a small Part of the Parish, (and which the Rectors have always received as such) and insisted that had there been any other *Modus* in the Parish, especially for a Thing of so much Consequence as Tithe of Hay: The Inquisition would have taken Notice of it; it was answered, *neither did it take any Notice of E. Offerings*, which plainly demonstrated the Rector was intitled to them both of common Right, there being no *Modus* to bar such Right.—In the Terrier of the Rectory of *Ashton*, it is said the Corn-Tithe, Privy-Tithe, and *Custom-Money*, amounts yearly to (*no sum mentioned*) This *Custom-Money*, is the 13l. 7s. 6d. paid for Corn-Tithes, which Defendant would insinuate, was 1d. for Tithe-Hay.

It was supposed, at the Hearing, that *Ashton* Rectory was worth between 400 and 500l. *per Ann.* according to the rise of other Livings for 120 Years last past, and the annual Income it produced at the Time the Inquisition was taken, the Supposition was well founded; but so far from it, the Tithes are not worth more now, than they were then, tho' the Glebe is above treble the Rent it was at that time; which shews there must have been a subtraction of Tithe some where, and for which it is not difficult

to

to account. For when the *Manchester* Trade spread itself to *Ashton*, great Part of the Arable was converted into Meadow, and parcelled out in little different Tenements as they appear this Day, and have never paid any Tithe since laid down for Meadow. Had there been a *Modus* for Tithe-Hay in the Parish, it would most certainly have covered the ancient Demefne Lands among the rest, which have belonged to the successive Patrons ever since the Church was built.— When the present Rector sent his Servant, *Thomas London*, to demand Hay-Tithe of *Wright*, *Kelsal*, and all the other Parishioners, *Wright* told him he never had paid any Tithe of Hay, or any Thing in lieu of it, and being prepared to Tithe the Hay, he was violently drove from off the Ground, and obliged to run away to avoid the Mischief he was threatened with. *It was observed that was an Argument that he had no business there*; an odd Conclusion to be drawn from such an Action; would it not have been more natural, to have concluded from *Wright's* telling *London*, that he never had paid any Tithe of Hay, nor any Thing in lieu of Tithe-Hay; and from his paying Mr. *Robinson* 6d. for himself and Wife,

for

for an Easter-Offering, and his Acknowledging it to be upon no other Account, and a just Claim, *that Hay-Tithe was due of common Right to the Rector.* As to the *Insinuation* 2d. only is due for an Easter-Offering to the Rector, that must fall to the Ground, as there is no Law that directs what Sum shall be paid in general for Easter-Offerings; but such Payments are governed by Custom, and Parishes differ widely one from another in that Respect. The People who pay 6d. a Man and Wife, and 4d. a single Person, and who have no Hay-lands, are several Hundreds, and equal in Number to those who have Meadow Lands, and pay no more for their Easter-Offering than they who have none: had there been but few of them, there might have been some sort of pretence that a Mistake relative to the Easter-Offering had crept in; but the greatness of their Number, with the concurring Circumstances of the Peoples paying the same 6d. and 4d. for an Easter-Offering, who pay Tithe-Hay in kind, and Mr. *Buckley of Alts*, paying *likewise* the same Easter-Offering, (altho' he really pays a *Modus* for the Hay-Tithe of his Farm,) as those who have no *Modus*, render such Conception impossible, and the pretended

tended *Modus* of 1d. in lieu of Tithe of Hay abortive, and an absolute Non-entity.

The Custom of paying Easter-Offerings, as set forth by the Plaintiff's Witnesses, viz. 6d. a Man and Wife, and 4d. a single Person, has not only subsisted these 40 Years, the Time prescribed by Law, but has been an Usage Time Immemorial. The Defendants, conscious of this, have clouded over the true State of the Cause, as they rightly judged it dangerous to their Attempt, to let the Parishioners in general know it, lest some Persons of Honour and Conscience might blast their Design, by joining Plaintiff's ~~mixing~~ *asserting* the Evidence and *the* Truth as to abovementioned Custom; hence it is, that not above 6 or 8 People in the whole Parish of *Ashton-under-line*, know any Thing of the Matter, more than that the Rector is at Law with *George Kelsal* and *William Wright*; tho' many of them contribute towards maintaining their Suit, which is illegal and punishable by the Law: *Kelsal's* application to *Shaw*, to tell the Parishioners who should ask him, what the 6d. was paid for; that 1d. of it was paid in lieu of Tithe of Hay, was during the Time a Cause was depending between Plaintiff and *Saxon* for Tithe of Hay, (and he *Kelsal*, expected a Bill to be
filed

filed against him by Plaintiff,) and in general Terms to tell every one so, who asked him, he then thought a general *Modus* to pay 1d. a Farm throughout the Parish, whether it consisted of 2, or 200 Acres was a good one; it plainly appears from his Request, he then had not the least Idea of a particular *Modus* for his and *Wright's* Farms, but had the Rector, filed the Bill against any others since *Saxon's* Trial, they too would have pretended to have had the same particular *Modus*.

The five or six People (out of the many Hundreds who annually paid the Easter Offerings) who Mr. *Craddock* mentioned to have told him at the receiving the same, that 1d. of it was paid for Tythe-Hay, were Defendants, and two or three more, whom *Kelsal* had instructed to ask *Shaw* what they paid the 6d. for; but it was not till after the Rector had demanded Tythe-Hay, that they told him of the 1d. People who have such advantageous *Modus's* as this pretended one, don't forget to remind the Parson for what he is paid, every Time he gathers them; had there been such a *Modus*, more People than 5 or 6, out of 800 or 1000 would have known of it. He, Mr. *Craddock*, said he received the E. Offering of 6d. a Man and Wife, of *Kelsal's*, Wife for an Easter Offering only,
and

and on no other Account, and of all other Parishioners; and believed it to be a general Custom in the Parish, to gather E. Offerings according to the aforesaid Mode, by reason he never heard of any Objection to it before the present Rector demanded the Tythe of Hay. And *Wright*, *Kelsal*, and the Parishioners in general, in 1759, before any Suit was commenced, told *London*, that they never had paid any Tythe of Hay, or any thing in lieu of it; and *Wright* and *Kelsal* paid Mr. *Robinson* their Easter Offerings, viz. 6*d.* each for themselves and Wives, and acknowledged the justness of the Demand, always before that of the Tythe of Hay was made by the Rector. Then the Defendants and two or three others pretended 1*d.* of the Easter Offerings was paid in lieu of Hay-Tythe. And tho' *Nicholson* in this Suit, to exonerate himself from a Debt due from him to the Plaintiff, for several Years Tythe-Hay, swore that 1*d.* of the 6*d.* was paid in lieu of Tythe-Hay. Yet Mr. *Robinson* swore *Nicholson* delivered to him as an ancient Mode of Collection, that of paying 6*d.* a Man and Wife, and 4*d.* a single Person, which several Circumstances puts the Question relative to Easter Offerings, viz. Whether 6*d.* is paid for a Man and Wife, and 4*d.* a single Person, beyond
all

all Doubt. Mr. *Craddock* proved *Nicholson* interested, nay he owned ~~is~~ himself.

It is to be observed, that *William Wright's* Farm consists of sixty Acres, *George Kelsal's* of twenty-five *Marland* swore, *Ashton's* of sixteen and a half, *Nicholson's* one and a half, and *Greaves's* of about two or three Acres; yet they all plead the same pretended Modus, of a 1*d.* and so may all the Parish do the same, except those who pay Tythe of Hay in kind. Hay Land in this Parish is worth 4*l.* or 5*l.* per Acre; and the pretended Modus does not ascertain what Quantity of Land a Person may hold according to it; he may hold half, nay all the Land in the Parish for 1*d.* which is contradictory to, and diametrically opposite to Reason and Equity.

The following is the Order of Court.

King's Remembrancer's Office.

Easter Term, in the Tenth Year of the Reign of
GEORGE the III.

SATURDAY 12 May, 1770.

Between Sir *George Booth*, Baronet, Clerk,
Plaintiff,

And *William Wright*, and Others, by Bill.
Upon

Upon the Motion of Mr. *Hall*, of Counsel for the Plaintiff, it was prayed that the Plaintiff, might be at Liberty to prove and read by Witnesses *Viva Voce*, at the Hearing of the Cause the following Exhibits, to wit, an examined Copy of a Commission, issued under the Great Seal of *England*, dated the 29th of *May*, 1650, and an Inquisition taken thereon by virtue of the said Commission, at *Manchester*, in the County of *Lancaster*, the 18th Day of *July*, 1650. An account of certain Persons holding Lands in the Parish of *Ashton*, in the County of *Lancaster*, who paid a Prescription for Tythe of Corn, to be the Hand-writing of the Rev. *John Penny*, late Rector of the aforesaid Parish. And also that the Plaintiff might be at Liberty to read the Depositions, taken in a Cause in this Court, wherein he was Plaintiff, and *John Saxon*, Defendant, which was for the same Species of Tythe, demanded by the present Suit, which is by the Court hereby ordered accordingly, leaving to the Defendants all just Exceptions thereto at the Hearing.

By Order of the Deputy Remembrancer,

FOWLER, for Plaintiff.

Notwithstanding this Order for reading the Depositions in *Booth* and *Saxon*, it was neglect-

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ed at the Hearing ; tho' it must have invalidated *Ashton's* Testimony, (had he not done it himself in this Cause,) if not have proved him perjured.

A D V E R T I S E M E N T.

WHEREAS in *Michaelmas* Term, 1768, *George Kelsal*, of the Parish of *Ashton-under-Line*, in the County of *Lancaster*, filed a Bill in *Chancery*, against the Rev. Sir *George Booth*, Bart. Rector of the said Parish, the Right Hon. the Countess Dowager of *Stamford*, Patroness of the said Rectory, and the Rev. *J. Craddock*, Lessee to the said Rector. And in *Trinity* Term, 1770, against the Right Hon. the Earl of *Stamford*, and his Son, Lord *Grey*, as being interested in the Advowson of the Church of *Ashton-under-Line*, in order to establish a pretended Modus for the Tythe of Hay, of his own particular Tenement, called *Dennis*, in the said Parish. And as there is great Reason to suspect, from an Article of Subscription drawn by the late Mr. *Broom*, Attorney at *Manchester*, and from *Kelsal's* nominating *Robert Knott*, *Neddy Hall*, *William Knight*, *James Buckley*, and others, in the Church of *Ashton-under-Line*, to collect Money to carry on Suits against the Rec-

tor.

tor. That he is maintained in his *particular Suit* by many Persons, who are supposed to be unacquainted with the Laws.—To the Intent that no one may err for want of such Knowledge, it is thought proper to acquaint them, That the Laws declare, that such Maintainers are not only liable to render Damages in an Action at the Suit of the Party aggrieved, but may also be indicted, fined, and imprisoned. And if any Person will make a Discovery to the Rector of such Collectors receiving, or such Contributors or Maintainers, giving any Sum of Money toward carrying on the said Suit, so as they may be convicted thereof, he shall be rewarded beyond his Expectation, for his Justice and Honesty; and if apprehensive of receiving any private Injury in his Person or Circumstances, on account of such Discovery, he shall be rendered independent in any other Place he shall choose to reside ~~in~~

F I N I S.

